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SUBJECT: RUSSIAN VIEWS ON AN INTERNATIONAL PIRACY TRIBUNAL

Classified By: Acting Political M/C David Kostelancik for reasons 1.4 (b/d).

¶1. (C) Summary: Russia favors some form of an international tribunal as the best means to ensure that suspected pirates are tried by uniform legal standards and to allow for thorough investigations to help build evidence against the criminal bosses directing piracy operations. Among the options the GOR is considering is establishing a full-blown international tribunal through a UNSC resolution, forming a regional tribunal through negotiations between the Contact Group on Somali piracy and coastal African states, and the creation of a special ad hoc international tribunal based on an existing national court in Africa. Russia is leaning toward this last option as possibly the most effective means to prosecute suspected pirates through an international tribunal that can be established rapidly, and without the need to create an entirely new organizational structure. The GOR has considered other options, such as trying suspected pirates in Russia or turning them over to regional states, but these options' procedural hurdles argued for an international tribunal. End summary.

International Standards Needed

¶2. (C) MFA Legal Department section head Vasiliy Titushkin told us on May 20 that the GOR supported the creation of an international tribunal to prosecute suspected pirates, but had not yet settled upon the preferred form for such a legal body to take. He explained that Russia saw an international tribunal as the best means to ensure that unified legal and human rights standards were applied to any prosecution of suspected pirates, thereby avoiding the current situation in Germany where pirates had challenged their prosecution based upon the grounds that their rights had been violated. The use of an international tribunal would also allow "deep investigations" into those people directing the activities of the individual suspects on trial, providing the international community the ability to identify and go after the criminal bosses behind the current piracy crisis.

Options for a Tribunal

¶3. (C) Titushkin explained that the GOR currently saw three options for an international piracy tribunal:

- A tribunal with international jurisdiction created by a UNSC resolution. The GOR assessed this option as potentially the most effective format for prosecuting suspected pirates, although the process necessary to adopt a UNSCR and set up the tribunal would be lengthy and expensive.

- Conclude an agreement among members of the international Contact Group on Somali piracy and African coastal states to form a regional tribunal. The approach would be less time consuming and costly than using the UNSC, particularly if the

proposed regional tribunal took advantage of existing institutions, such as using judges and technical experts from the Rwanda tribunal that will soon come to an end.

- Create a special ad hoc international tribunal based on an existing national court. The GOR considers this option the most promising, as international technical and monetary assistance could benefit a national court system that already has the legal means to prosecute suspected pirates, such as Kenya's or Tanzania's, and establish a special mechanism within the existing court system, thereby negating the need to create an entirely new organizational structure. Unlike a full tribunal, an ad hoc tribunal would not sit permanently and only be called when suspected pirates were captured and turned over for prosecution. The GOR thought that an ad hoc tribunal could also take advantage of the expertise and resources that become available when the Rwanda tribunal ended. Titushkin said that the GOR has been discussing a possible ad hoc tribunal with Germany, which has been an early and strong proponent of this option.

Existing Procedural Hurdles Hamper Prosecutions

14. (C) Titushkin explained that the GOR would have no legal difficulty prosecuting suspected pirates in Russia, as Russian law provided provisions for the prosecution of such crimes, including extending jurisdiction beyond Russian borders. However, there was a procedural problem: Russian law requires suspects be brought before a judge within 48 hours of arrest, an impossibility in most piracy cases. Also, Russian naval vessels are not equipped to hold large

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numbers of captured pirates.

15. (C) Titushkin said that Russia had transferred suspected pirates to regional states, but this presented the problem of providing evidence in accordance with the legal system of the country carrying out the prosecution. Russia, a country with a "continental" legal system, could, for example, have difficulty providing proper evidence to Kenya, which has an "Anglo-Saxon" legal system, in Titushkin's words. Furthermore, prosecution would require the personal appearance by the captain of the vessel that captured the suspects, or other naval personnel, requiring the partial removal of their immunity from the local court. The Russian MOD had made clear that it opposed exposing its personnel to such a risk.
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